

CA1 R6 62
-61815

Government
Publications



3 1761 11638403 3

Canada. Restrictive Trade
Practices Commission
Report



Canada

RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

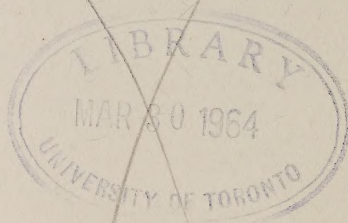
Concerning Alleged Attempts at Resale Price
Maintenance in the Distribution and Sale
of Cameras and Related Products
(Arrow Photographic Equipment Limited)



DEPARTMENT OF JUSTICE
OTTAWA

LIBRARY
MAR 30 1964
UNIVERSITY OF TORONTO
ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

RTPC No. 15
(Series begins 1959)



889412 .

CA 1 RG 62
- 61515

Government
Publications

RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING ALLEGED ATTEMPTS AT RESALE PRICE
MAINTENANCE IN THE DISTRIBUTION AND SALE
OF CAMERAS AND RELATED PRODUCTS
(ARROW PHOTOGRAPHIC EQUIPMENT LIMITED)

COMBINES INVESTIGATION ACT

Ottawa
1961

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1961

Price, 50 Cat. No. J53-61/15
Available from the Queen's Printer
Ottawa, Canada

RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.
Chairman

Pierre Carignan, Q.C., M.A., LL.L.	A.S. Whiteley, B.A., M.A.
Member	Member



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116384033>

RESTRICTIVE TRADE PRACTICES COMMISSION

O T T A W A

July 12, 1961

Honourable E. Davie Fulton, P.C., Q.C., M.P.,
Minister of Justice,
Ottawa.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with alleged attempts at resale price maintenance in the distribution and sale of cameras and related products by Arrow Photographic Equipment Limited.

The matter was brought before the Commission by the submission of a statement of the evidence obtained in the inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of sections 18 and 19 of the Act.

Argument on the Statement of Evidence was heard by the Commission at Toronto on March 22, 1961. Messrs. S. F. Sommerfeld and L.P. Landry appeared on behalf of the Director of Investigation and Research, and Mr. John C. Denison, Q.C. appeared on behalf of Arrow Photographic Equipment Limited.

Yours faithfully,

(Sgd.) C. Rhodes Smith

C. Rhodes Smith
Chairman

CONTENTS

	Page
CHAPTER I - INTRODUCTION.	1
1. Reference to the Commission	1
2. Hearings and Witnesses	1
3. Allegations in the Statement of Evidence .	3
4. Position Taken by Arrow Photographic Equipment Limited with Respect to Allegations	6
CHAPTER II - DISTRIBUTION OF PHOTOGRAPHIC EQUIPMENT BY ARROW	12
1. Nature of Business	12
2. Development of Franchise Plan for Rollei- flex 6 x 6	14
CHAPTER III - ARROW'S DEALINGS WITH LONDON DRUGS LIMITED, BAKER DRUGS LTD. AND EDMONTON PHOTO SUPPLY LTD.	22
1. London Drugs Limited	22
2. Baker Drugs Ltd.	30
3. Edmonton Photo Supply Ltd.	34
CHAPTER IV- CONCLUSIONS AND RECOMMENDATION . .	38
A. Conclusions	38
B. Recommendation	42

CHAPTER I

INTRODUCTION

1. Reference to the Commission

This inquiry was brought before the Commission by the Director of Investigations and Research under the Combines Investigation Act submitting under date of February 3, 1961 a statement of the evidence which had been obtained in the inquiry. At the same time the Director submitted a copy of the Statement of Evidence to Arrow Photographic Equipment Limited, against whom allegations were made therein. In the Director's Statement and in this report Arrow Photographic Equipment Limited is sometimes referred to as "Arrow".

2. Hearings and Witnesses

The origin of the inquiry by the Director is described as follows in the Statement of Evidence:

"2. This inquiry was commenced as the result of complaints alleging that certain distributors of photographic equipment and supplies and, in particular, still-and motion-picture cameras and projectors, were practising resale price maintenance in connection with the distribution of their products, contrary to section 34 of the Combines Investigation Act."

In the course of the inquiry conducted by the Director the books and records of Arrow Photographic Equipment Limited, 30 Duncan Street, Toronto, Ontario were examined by representatives of the Director, and certain documents were selected and copied and the original documents returned. All documents selected for copying were marked with code letters in the upper right-hand corner to indicate the particular premises on which the documents were found and with code numbers.

During the inquiry, hearings for the taking of evidence were held on application of the Director. The following witnesses were examined before Mr. A.S. Whiteley, a member of the Commission, at Vancouver, B.C. on January 15, 1960:

Nels I. Nyberg, Former Salesman,
Arrow Photographic Equipment Limited,
1501 Burrill Street,
North Vancouver, British Columbia

Archie Baker, Owner,
Baker Drugs Ltd.,
901 Granville Street,
Vancouver, British Columbia

Samuel Solomon Bass, Owner,
London Drugs Limited,
800 Main Street,
Vancouver, British Columbia

At hearings held at Toronto, Ontario on February 16 and 17, 1960 before Mr. C.R. Smith, Q.C., Chairman of the Commission, the following gave evidence:

George Francis Moss, President,
Arrow Photographic Equipment Limited,
30 Duncan Street,
Toronto, Ontario

Jack Ryan Couse, Sales Manager,
Arrow Photographic Equipment Limited,
30 Duncan Street,
Toronto, Ontario

Certain exhibits were also filed at these hearings.

On receipt of the Statement of Evidence the Commission, in accordance with the provisions of section 18 of the Combines Investigation Act, fixed Wednesday, the 22nd day of March, 1961 at 10 a. m. in the Board Room, Department of Labour, MacKenzie Building, 36 Adelaide Street West, Toronto, Ontario as the date, time and place at which argument in support of the Statement of Evidence might be submitted by or on behalf of the Director of Investigation and Research and at which Arrow Photographic Equipment Limited would be allowed full opportunity to be heard with respect to the allegations against the Company made in the Statement of Evidence.

At the hearing before the Commission the following appearances were entered:

S.F. Sommerfeld
L.P. Landry

- for the Director of Investigation
and Research

John C. Denison, Q.C.

- for Arrow Photographic Equipment
Limited

Mr. George F. Moss, President, Arrow Photographic Equipment Limited, was also in attendance.

In this report reference to evidence given in the inquiry conducted by the Director will be made as (Evidence, p. . . .) and reference to proceedings before the Commission as (Hearing, p. . . .)

3. Allegations in the Statement of Evidence

The concluding section of the Statement of Evidence contained a summary and allegations which are given below. The allegations refer to dealings of Arrow Photographic Equipment Limited with three retailers, namely: London Drugs Limited, 800 Main Street, Vancouver, B.C.; Baker Drugs Ltd., 901 Granville Street, Vancouver, B.C. and Edmonton Photo Supply Ltd., 10041 101A Avenue, Edmonton, Alberta. The summary and allegations follow:

"A. SUMMARY

115. The evidence in this Statement indicates that during the period covered by this Inquiry Arrow sought, as a matter of policy, to control the retail selling prices of products furnished by it. Inter-office memoranda, and correspondence between Arrow's agents and employees and third parties indicate that Arrow objected to retail advertising at prices below those suggested by Arrow and in some cases to selling at prices below those suggested by Arrow, particularly with regard to the Rollei line of cameras. The evidence indicates that retail dealers were instructed by Arrow not to advertise Arrow products at prices below those suggested by Arrow, and that it was Arrow's policy not to supply retailers who advertised or in some cases who sold or intended to sell its products at prices below suggested resale prices.

116. In order to assist in controlling retail prices Arrow instituted a retail franchise agreement in September, 1958, covering certain items in the Rollei line of cameras and accessories. The evidence indicates that the institution of a franchise was prompted by advertising at prices below the Company's suggested list prices on the part of certain retailers. The franchise was designed to eliminate price-cutting at least on the items covered thereby. Following its adoption, the franchise continued to be regarded by Arrow and by retailers as a

means of controlling resale prices.

117. The evidence indicates that certain dealers objecting to price-cutting practices on the part of some of their competitors wrote to Arrow expressing their objections to such practices and also requesting that some action be taken by Arrow in order to stop these practices. The evidence also indicates that at least one Vancouver dealer, Dunne & Rundle Limited, threatened to refrain from making further purchases from Arrow if it continued to supply another dealer engaged in price cutting practices in Vancouver.

118. The evidence indicates that Arrow Photographic Equipment Limited attempted on a number of occasions, between May 1958 and February 1959, to have London Drugs advertise its products at Arrow's suggested list price, and that after February 1959 it did refuse to supply London Drugs with further photographic equipment, because of the latter's policy of advertising and selling Arrow's products at prices below its suggested list prices.

119. Attempts were made by Arrow Photographic Equipment Limited, through its Vancouver representative Nels Nyberg, to induce London Drugs not to advertise certain of Arrow's products at prices below Arrow's suggested list prices as reflected in the following documents: 1) in a memorandum dated June 9, 1958, Nels Nyberg reported to G.F. Moss that, although London Drugs wanted to advertise the Rollei 4 x 4 cameras at a price below Arrow's suggested list price, he had been successful up to that time in preventing London Drugs from doing so; 2) in a memorandum to G.F. Moss, dated February 13, 1959, Nels Nyberg reported that he had 'repeatedly' asked Mr. Bass, the Proprietor of London Drugs, not to advertise Arrow's Elmo Projectors at a price below Arrow's suggested list price.

120. Because of its 'price-cutting' policy, London Drugs, in August or September 1958, was rejected as a Rollei Franchised Dealer by Arrow and, consequently, could not secure any supplies of Rolleiflex 6 x 6 cameras.

121. After February 1959, London Drugs was refused supplies of Elmo Projectors, distributed by Arrow, because it had not complied with Nels Nyberg's request not to advertise these projectors at a price below Arrow's suggested list price.

122. The evidence also indicates that Edmonton Photo Supply Ltd. was refused supplies of Rolleiflex 6 x 6 cameras by Arrow because of its policy of advertising products at a price below Arrow's suggested list price.

123. At one time in April or May 1959, Edmonton Photo Supply Ltd. ordered some Rolleiflex 6 x 6 cameras from Arrow. Since these products were sold by Arrow to franchised dealers only, a franchise was offered by Arrow to Edmonton Photo Supply Ltd. on the express condition that the latter store would not advertise or sell the products obtained under the franchise prices below Arrow's suggested list price. Upon the refusal of Edmonton Photo Supply Ltd. to agree to such a condition, Arrow through Mr. Dudlets, its representative, refused to accept Edmonton Photo Supply Ltd. as a franchised dealer and, consequently, to supply it with Rolleiflex 6 x 6 cameras.

124. The evidence also indicates that Arrow Photographic Equipment Limited through Nels Nyberg, its Vancouver representative, attempted to have Baker Drugs Ltd. advertise its products at Arrow's suggested list price and that upon refusal by Baker Drugs Ltd. to do so with regard to the Rolleiflex 6 x 6 cameras, Arrow refused to supply Baker Drugs Ltd. with these cameras.

125. On or about September 18, 1958 Archie Baker, Proprietor of Baker Drugs, applies [sic] through Nels Nyberg for a Rollei franchise. Nels Nyberg, in a report to Arrow's head office dated September 19, 1958 indicated that because of Baker Drugs' price-cutting policy, he would not accept the latter store as a franchised dealer. At the beginning of January 1959, Archie Baker ordered a Rolleiflex 6 x 6 camera from Arrow. At that time Nels Nyberg attempted to have Baker Drugs refrain from advertising or selling Arrow's products at prices below Arrow's suggested list price. Because of such price-cutting policy, Baker Drugs Ltd. was refused as a franchised dealer by Arrow and, consequently, was refused supplies of Rolleiflex 6 x 6 cameras.

B. Allegations

126. It is alleged that from time to time during the period of May 1, 1958 to July 31, 1959, Arrow Photographic Equipment Limited, being a dealer within the meaning of section 34 of the Combines Investigation Act, directly or indirectly, by agreement, threat, promise or other means, did require or induce or attempt to require or induce London Drugs Limited, Baker Drugs Ltd. and Edmonton Photo Supply Ltd., to resell certain products, in particular still cameras, at prices specified or at prices not less than certain minimum prices specified by the said Arrow Photographic Equipment Limited. Particulars of such allegations are set out in paragraphs 118 to 125 hereof.

127. It is alleged that from time to time during the period May 1, 1958 to July 31, 1959 Arrow Photographic Equipment Limited, being a dealer within the meaning of section 34 of the Combines Investigation Act, did, from time to time, refuse to supply certain of the products distributed by it, in particular still cameras, to London Drugs Limited, Baker Drugs Ltd. and Edmonton Photo Supply Ltd. for the reason that such retailers had refused to resell or offer for resale such products at prices specified or at prices not less than minimum prices specified by Arrow. Particulars of such allegations are set out in paragraphs 118 to 125 hereof.

128. It is alleged that from time to time during the period of May 1, 1958 to July 31, 1959, Arrow Photographic Equipment Limited, being a dealer within the meaning of section 34 of the Combines Investigation Act, directly or indirectly, by agreement, threat, promise or other means, did require or induce or attempt to require or induce London Drugs Limited, to resell certain products, in particular motion-picture projectors, at prices specified or at prices not less than certain minimum prices specified by the said Arrow Photographic Equipment Limited. Particulars of such allegations are set out in paragraph 119 hereof.

129. It is alleged that after the month of February 1959, Arrow Photographic Equipment Limited, being a dealer within the meaning of section 34 of the Combines Investigation Act, did, from time to time, refuse to supply certain of the products distributed by it, in particular motion-picture projectors, to London Drugs Limited, because London Drugs had resold or offered to resell such products at prices less than prices specified or less than minimum prices specified by the said Arrow Photographic Equipment Limited. Particulars of such allegations are set out in paragraph 121."

4. Position Taken by Arrow Photographic Equipment Limited with Respect to Allegations

In giving notice of the hearing, the Commission, in accordance with its usual practice, had requested Arrow Photographic Equipment Limited to submit, in advance of the hearing if possible, a statement indicating the position taken by the Company with respect to the facts and conclusions set out in the Statement of Evidence. In response to this request a brief was submitted to the Commission on behalf of Arrow. It contained the following submissions.
(References to evidence in the inquiry are designated "E" and to the Statement of Evidence as "S".)

"1. GENERAL

The Company takes the position that its course of conduct with respect to the three retailers London Drugs Limited, Baker Drugs Limited and Edmonton Photo Supply Limited was legally justified for considerations entirely apart from any question of resale prices and having regard to the provisions of subsection 5^[1] of section 34 of the Combines Investigation Act. The Company also takes the position that the Statement of Evidence does not support the allegations of misconduct; that much of the evidence is irrelevant to the issues involved and that the summary submitted by the Director of Investigation and Research is based on inferences not conclusively supported by the evidence.

2. FACTS AT ISSUE

Issue is taken with the evidence of Archie Baker of Baker Drugs Limited as to the volume of business done in photographic equipment (E-29) and as to that firm's facilities for service and repairs (E-34). Similarly, issue is taken with the evidence of Samuel Bass with respect to his company's volume of business (E-47) and service and repair facilities (E-61). It is the Company's contention, based upon knowledge of the size and layout of their stores and of the space allotted for photographic business, that this is a relatively minor adjunct of their main drug store business (E-26). The same is also true to a lesser extent of Edmonton Photo Supply Limited.

3. ALLEGATIONS AT ISSUE

The first allegation contained in paragraph 126 of the Director's Statement of Evidence involves all three retailers. It is submitted that there is no evidence as to the prices or minimum prices which the Company is alleged to have specified, nor any evidence that the Company did in fact specify prices or minimum prices. The evidence shows that the Company's concern was over indiscriminate and unreasonable discounts and in this respect reference is made to the article appearing on the front page of The Globe and Mail on Monday, 13 March, 1961, under the heading 'PRESSURE PUT ON STORES: APPLIANCE BARGAINS ENDED!'

1 Subsection 5 of section 34 was included in amendments to the Act made in 1960 and provides certain defences in a prosecution for violation of section 34.

The second allegation contained in paragraph 127 also concerns all three retailers and the allegation is, in brief, that these firms were cut off because of failure to maintain specified prices. The evidence is, however, that London Drugs Limited had never been supplied with the particular camera in question (E-50) and, therefore, it is submitted that it could not be cut off. The other two firms were not accepted as dealers under the Company's Franchise Plan, which plan, it is submitted, was legal and valid.

The third allegation is contained in paragraph 128 and only involves London Drugs Limited and relates to motion picture projectors. Again, it is submitted on behalf of the Company that there is no evidence as to the price or minimum price alleged to have been specified by the Company, nor any evidence that any price or minimum price was in fact specified by the Company.

The fourth allegation contained in paragraph 129 involves only London Drugs Limited and relates to motion picture projectors. While there is evidence to support this allegation (E-52), there is also evidence to show that the Company was justified in its course of conduct by reason of the fact that this firm was making a practice of selling these articles at unreasonably low prices (E-15-19-52-53) presumably for the purpose of attracting customers to its drug store.

4. SUMMARY OF EVIDENCE

The Company takes issue with the Director's Summary of Evidence set out in paragraphs 115 to 125 of his Statement, and the same paragraph numbers are used hereunder.

115. As mentioned above there is no evidence as to the prices alleged to have been specified by the Company or that the Company did in fact specify resale prices. The only prices specified by the Company were its own selling prices and it is submitted that no inference of price fixing can be drawn from its practice of using a discount method in its price lists (E-206). The inter-office memoranda and correspondence referred to in this paragraph use expressions such as 'cut prices,' 'price cutting,' 'discount houses,' 'off-beat outlets,' 'gift catalogues,' etc. It is submitted that this evidence does not support the statement that the Company sought to control the retail selling prices of products furnished by it, but rather that it sought to avoid dealing with the type of outlet characterized by the above expressions (S-8) and this the Company was entitled to do. In fact, the evidence is that no resale price was maintained by the Company's dealers in general (E-19). It is further submitted that

there was nothing unlawful in the Company using a suggested resale price or verbally suggesting resale prices, which is all this part of the evidence amounts to.

116. There is nothing in the Franchise Agreement about resale prices (S-13) and it is not correct to state that this was introduced 'in order to assist in controlling retail prices' or that 'the franchise was designed to eliminate price-cutting.' The evidence (S-13) is quite clear that the franchise was designed to induce dealers to carry larger stocks in return for some protection against too much competition (S-15-17) and is a perfectly normal arrangement between a distributor and a retailer, as witness the automobile companies. Unless all franchise agreements are to be considered unlawful, it is submitted that the Company was and is entitled to use this plan and further that the Company has a perfect right to grant such a franchise to whom it sees fit and to refuse such a franchise at its sole discretion. It should be noted also that this franchise only covered one type of camera, the Rollei 6 x 6 (S-15), which is a professional camera (E-263) where the element of service with respect to demonstrating and explaining its intricate mechanism was of prime importance.

117. While the relevancy of the evidence referred to in this paragraph is doubtful, it does serve to substantiate the Company's contention that no resale prices were specified by it (S-44). It shows that it was the retailers themselves who sought to maintain an adequate profit margin and who considered that outlets like London Drugs Limited were selling at unreasonable discounts (S-45). . . .

118. While no reference for the evidence covered by this paragraph is given in the paragraph, it is again submitted that there is no evidence that the Company at any time specified a list price.

119. There is no reference in the memoranda referred to (S-23-31) to the words 'below Arrow's suggested list price.' The words used in both instances are 'cut-price' which is quite a different thing.

120. The evidence is that London Drugs Limited were never supplied with Rollei 6 x 6 cameras (E-50) and it is submitted that the Company had the right to pick and choose its franchised dealers.

121. The evidence does not disclose any specific order from London Drugs Limited having been refused (S-32). On the contrary, all orders received by the Company were filled. It is

submitted that no verbal notification (E-51) to this Company would have stopped it from ordering goods, if it wanted them.

122. The evidence is that Edmonton Photo Supply Limited was not franchised by the Company to handle the Rollei 6 x 6 and, therefore, not entitled to order these cameras.

123. As mentioned above, there is no condition in the Franchise Agreement relating to price maintenance and the letter of Mr. Couse to Mr. Rudolph on 20 May, 1959, (S-33) is quite incorrect in this respect, although it must be noted that here again the words used are 'discount prices.' However, Mr. Couse's subsequent letter of 2 June, 1959, (S-34) sets out a valid basis for determining the granting of a franchise. The report of Mr. Dudlets, dated 14 June, 1959, (S-36) also indicates why the Company would decide not to grant a franchise to this retailer. It is submitted that the evidence does not support the summary that there was an express condition not to sell below the suggested list price.

124. Here again the Company was under no obligation to supply Rollei 6 x 6 cameras to a non-franchised dealer. Nor is there any evidence of a price specified by the Company nor any reference to a suggested list price. Again the words used are 'cut prices' (S-40).

125. It is submitted that the Company's legal position with respect to the granting of franchises is well set out by Mr. Couse in paragraph 95 of the Statement. The Company was justified in refusing this franchise on credit grounds (E-18-33).

5. SUBSECTION 5 OF SECTION 34 OF THE ACT

It is significant that all three retailers involved in this matter are really drug stores. Despite the evidence of Mr. Bass as to the volume of business by London Drugs Limited in photographic equipment, it is the contention of the Company that the photographic part of each of these firms was relatively small and merely incidental to their main drug store business. The evidence shows that they were all selling photographic equipment at unprofitable discounts and it is submitted that they were obviously using these products for 'bait-selling.' To the knowledge of the Company, they were not properly qualified with respect to giving the service required with expensive cameras and projectors. It is submitted that subsection 5 provides a defence to the Company to all the allegations, if one is needed. . . .

6. PUBLIC INTEREST

It is submitted that even if one or all of the four allegations made against the Company are considered to be proven, the effect on the public interest was negligible. The total number Rollei 6 x 6 cameras bought from the Company since the franchise was dropped by all three dealers amounts to seven, representing less than \$1,000.00 in value.

It should also be noted that the acts giving rise to the allegations of misconduct by the Company have been completely discontinued since the beginning of this enquiry (E-210).

7. CONCLUSION

For the reasons given above, it is submitted on behalf of the Company that:

- (a) The allegations are not supported by the evidence.
- (b) The inferences drawn from the evidence are incorrect.
- (c) The conduct of the Company with respect to the retailers mentioned in the allegations was justified and, therefore, not misconduct.
- (d) The effect of the alleged misconduct on the public interest was negligible.
- (e) The enquiry has served its purpose of stopping the alleged misconduct.
- (f) Having regard to the public interest and the public purse, further action is not warranted."

CHAPTER II

DISTRIBUTION OF PHOTOGRAPHIC EQUIPMENT BY ARROW

1. Nature of Business

The Statement of Evidence contains the following description of Arrow, the lines of photographic equipment dealt in and the method of distribution:

"7. Arrow Photographic Equipment Limited (sometimes hereinafter referred to as Arrow) was incorporated under the Ontario Companies Act by Letters Patent dated September 5, 1944 under the name Arrow Films Limited. By Supplementary Letters Patent dated June 14, 1957 the name was changed to Arrow Photographic Equipment Limited. The Company's head office is located in Toronto.

8. Arrow is engaged in the distribution of imported photographic equipment. It distributes throughout Canada the following lines of still-and motion-picture cameras, projectors and accessories: (See Exhibit 1, Serials 28 to 60 inclusive)

Rolleiflex, manufactured by
Franke and Heidecke,
Brunswick, West Germany

Bauer, manufactured by
Bauer Camera Works,
Stuttgart, West Germany

Elmo, manufactured by Elmo Limited,
Nagoya, Japan

Kilfitt, manufactured by
Kilfitt,
Munich, West Germany

Aldis, manufactured by
Aldis Brothers Ltd.
Birmingham, England

The Rolleiflex, Bauer and Elmo lines were described by G.F. Moss, President of Arrow, as the main lines distributed

by the Company. For a period of time, Arrow distributed a line called Photavit, distribution of which has now been discontinued (Evidence, pp. 192-94). The evidence indicates that Edixa cameras and accessories are also distributed by Arrow (Evidence, p. 4; Exhibit 1, Serial 255). The Company is the exclusive Canadian distributor of the lines mentioned in this paragraph (Evidence, p. 208).

9. Arrow distributes its products to retailers through salesmen working under the supervision of a sales manager located in Toronto. The whole of Canada is divided into four areas with one salesman assigned to each of them as follows: (Evidence, p. 264)

British Columbia, Alberta and Saskatchewan,
Al Dudlets

Western Ontario, Northern Ontario and Manitoba,
Robert Card

Toronto and Eastern Ontario,
Michael Small

Quebec, Maritimes and New foundland,
Jean Goyette

G.F. Moss, President of Arrow, indicated in his evidence that half of customers' orders came directly to the head office, and not through regional salesmen (Evidence, p. 191). Documentary evidence indicates that salesmen of the Company were instructed to make regular call reports to the Sales Manager (Exhibit 1, Serials 243-45, 253-55).

10. A catalogue and price list, showing suggested list (i.e. resale) prices for the Company's different products, are published by Arrow and distributed to its retailers (Evidence, p. 195). Prices at which products are sold to retailers are derived from the suggested list prices published in the Company's catalogue. Discounts off the suggested list prices are indicated by code letters the meaning of which is explained on a sheet inserted in the catalogue showing the discount applicable to each code letter (Exhibit 1, Serial 29). In his evidence, G.F. Moss pointed out, however, that discounts of 20, 25 and 30 per cent as shown on Exhibit 1, Serial 29 were no longer used by the Company (Evidence, p. 205). The discounts extended by the Company at the present time are 33 1/3 per cent, 33 1/3 per cent plus 5 per cent, 35 per cent, 38 per cent, 40 per cent, and 50 per cent (Exhibit 1, Serial 29). Quantity discounts are available in some instances as well as 1 per cent cash discount.

The quantity discounts are specified in the Company's catalogue and are extended when the quantities indicated are ordered.¹ . . .

11. With regard to Arrow's pricing policy, Mr. Moss indicated that the Company usually added a markup of 35 per cent over its landed cost for photographic equipment in order to arrive at its selling price to retailers, and that its suggested retail price represented a further markup at the retail level of 66 per cent on that price (Evidence, pp. 197, 199, 201). The above would indicate that the Company's suggested list price is approximately 2.24 times the landed cost of the merchandise. This gives the Company a gross profit on sales of 25 per cent and the retailer a gross profit on sales of 40 per cent."

Arrow maintains a service department which handles repairs for products distributed by the Company. Photographic equipment sold under the manufacturer's guarantee would be repaired without charge by Arrow even if the article had not been purchased in Canada. Minor adjustments of photographic equipment might be done by the retailer, particularly if a large store, but articles are generally serviced by return to Arrow (Evidence, pp. 211-12).

2. Development of Franchise Plan for Rolleiflex 6 x 6

By 1958, Arrow had customer lists embracing about 1,100 dealers across Canada (Evidence, p. 248). Apparently a rapidly expanding market for photographic equipment had induced a number of retailers who had previously dealt in cameras and films in a limited way to engage more extensively in the distribution of photographic equipment and supplies. This development was accompanied in some areas by the advertising and sale of well-known lines of photographic equipment by some dealers at substantial reductions from the suggested retail list prices for such articles. The introduction of this method of promoting sales was regarded with disfavour by some specialized photographic stores and in some cases opposition was expressed by such dealers to distributors continuing to supply stores engaging in what was regarded as cut-price or discount selling. The situation in the Vancouver area was described by Mr. Nels I. Nyberg, former salesman of Arrow, when he was examined about a letter of July 31, 1958 which he wrote to Mr. Couse, Sales Manager, Arrow:

¹ For example, see Exhibit 1, Serial 34 where Bauer projectors are offered at a discount of 33 1/3 per cent on one and 33 1/3 per cent and 5 per cent on three.

- "Q. I am quoting the first paragraph: 'I have twenty-five Elmo 8 mm projectors in the Customs. London Drug will take immediate delivery of thirteen of these and I will sell to them providing I can get Sam Bass to ease off on the advertising.' My question is, on this occasion did you supply Mr. Bass with the 13 Elmo projectors mentioned in this document?
- A. Yes, Mr. Bass bought a lot of Elmo projectors from us.
- Q. On this same occasion, did you have any discussion with Mr. Bass in regard to his advertising or selling policy?
- A. I am afraid I can't remember that. Whether I would have or not.
- Q. Referring back to the paragraph I just read, what did you mean by 'ease off on the advertising'?
- A. Would you clarify that question, please?
- Q. At the end of the first paragraph, you said 'I will sell to them providing I can get Sam Bass to ease off on the advertising'. Can you tell me what you mean by that sentence, to 'ease off on the advertising'?
- A. Well -- at that period -- I don't know whether you know too much about the photographic industry or not, but at that period in Vancouver there was a great deal of discount on the part of other dealers in the industry. Photolec and people like that, who had normally up until that time always sold at the suggested retail price or near it and then London Drugs came along, of course they were very upset. They were losing sales to London Drugs who were selling at cut prices. . . . Of course, at that time there was a great deal of opposition on the part of such people as Photolec and Dunne & Rundle and other dealers in the City who were objecting to these distributors, not only Arrow Photographic but others, selling to people like London Drugs and therefore, of course, to supply both, it is a very difficult problem and yet we have to. The only way you can do that is if they can change their advertising policy a little and not cut their prices quite so much so as to hurt the sales of the other dealers."

In the summer of 1958 Arrow made preparations for the introduction of a franchise plan for Rolleiflex 6 x 6 cameras and accessories. In a letter of June 23, 1958 to Mr. Couse, Mr. Nels I. Nyberg suggested the adoption of a franchise system because of the situation in Vancouver. He wrote as follows:

"I would like to write a few words to you concerning the trend of things out here on the West Coast. I feel that we are faced with several rather serious problems. There is no doubt that the present recession has affected business generally. However, several other things enter into it in the local picture.

Vancouver dealers at the moment are very leery of buying anything in quantity. Several things cause this. For one, the dealers generally feel that the industry is changing too quickly - that too many new models of cameras, projectors, etc. are coming out from all the different distributors and while we, this week, may have an item which looks very enticing, next week this may become outmoded.

Another aspect of the situation is that price cutting has come to the fore here recently. As you know, London Drug is the biggest defaulter here. This makes the old line parties such as Dune [sic] & Rundle, Photolec very leery of any special deal that we might offer since they have no guarantee that London Drug will not undercut them. However, the other dealers are also offering discounts and the public generally is shopping for price and usually end up buying where they can get the best camera for the least dollars. Therefore, although I have approached the dealers with the Rollei 4 x 4 baker's dozen deal, they are not too impressed.

As far as the Rollei is concerned, I personally feel that we have to do something drastic. While I know that Mr. Moss is not too favourably impressed with the Leica franchise set-up, I feel something similar should be done with Rollei. The idea of limiting the number of Rollei dealers and making these few stock everything, may be the answer whereas at present the public can go anywhere pretty well to buy a Rollei and consequently shop for price.

I am enclosing a clipping from the Vancouver Sun of a few days ago which will give you an idea of what is going on. This situation of price cutting would not have affected business too seriously a year ago but today with the present economic troubles here in the West, unemployment, threats of more strikes, I think it has quite a serious effect.

I had a long talk with Mr. Rundle the other day and he

felt that something similar to what I have suggested to you on Rollei should be done. He said that they did not feel like promoting any product which is being undercut drastically. Prior to this latest development with London Drugs the only price cutting we did have was the periodic sales by department stores. Of course, Rollei has not been cut by London Drugs. As far as I am concerned, it wont [sic] be.

Of course, I suppose we could argue all day and get nowhere. As you know, a similar situation exists in Edmonton with Edmonton Photo Supply.

However, I do feel very strongly about Rollei and I believe that if something along the lines I have suggested were done these dealers would do a terrific job for us.

As far as the Rollei window contest is concerned Rushant Camera Supply, Dunne & Rundle, Photolec, Jack Cash cameras, will all very likely put in a window in the very near future.

I would appreciate your views on this matter. I don't know whether you are experiencing the same type of trouble back East, but as you know, the dealers out here have always been very conscious of maintaining price and I might add have been very fortunate up to now in having been able to do so."

(Exhibit 1, Serials 87-88)

Mr. G. F. Moss, President, Arrow, gave the following evidence in regard to the adoption of the franchise plan for Rolleiflex 6 x 6:

"Q. How did the franchise come about?

A. The franchise came about because we found that when we had so many outlets nobody stocked and therefore nobody sold accessories which are 20 per cent roughly of our business - 18 to 20 per cent. The reason for that is quite simple, that if you have 100 outlets in Toronto there is no need for 100 separate items like an underwater camera or a hundred lens hoods. As you can see there are a lot of accessories in the catalogue and besides that there are codes one, two and three so there are three times as many as you see here. We wondered how come they were not selling accessories. We sat down with the legitimate dealers and they said: 'Why should we stock lens hoods and know-how to use them and filters and meters and all these technical things when everybody is handling them,

when there is no reason. If we could have fewer people with technical knowledge who are in the business and only them we would stock up with accessories.' This was suggested first from the need for it and maybe five or six dealers put tremendous pressure on us, I mean they were not buying anything from us until we took some such steps to see that they were given some kind of preference in order to stock these accessories. This is created by the dealers, not by us and this is as we say in all the literature you must have there leading up to it, we wrote a great many inquiries to our dealers, what is it they wanted from a franchise, what did they want to cover in it and the points are indicated here one to 19, I think."

(Evidence, pp. 244-45)

Early in September, 1958 Arrow notified all its dealers of the introduction of the Rollei Franchise Plan. A letter explaining the purpose of the franchise applicable only to 6 x 6 Rolleiflex cameras contained the following:

" . . .

Co-operation is a two-way street. We offer exclusive protection, extra discount, sales aids and advertising and the Franchised Dealer will undertake to stock a complete range of cameras and accessories.

. . ."

(Exhibit 1, Serial 133)

The principal features of the franchise plan for 6 x 6 Rolleiflex are summarized as follows in the Statement of Evidence:

"41. Under the terms of the Rollei Franchise (Exhibit 1, Serials 134-35) franchised dealers received certain advantages not given to non-franchised dealers. These advantages were granted to the franchised dealers in consideration of their undertaking to keep a specified minimum stock of Rolleiflex 6 x 6 models and accessories. The Company undertook, under the franchise, not to supply non-franchised retailers with Rolleiflex [sic] 6 x 6 models.

42. The following are some of the advantages mentioned in the franchise:

- 1) On any three accessories a discount of 33 1/3 per cent and 5 per cent;
- 2) On initial order a discount of 40 per cent;
- 3) Advance information on new models;
- 4) Training and Sales Aids;
- 5) Priority in delivery of supplies;"

In a letter of September 22, 1958 to Dunne & Rundle Limited of Vancouver, Mr. Moss wrote:

" . . .

We cannot set list prices under Canadian Law. We can withhold a franchise. We can withdraw a franchise. Among other reasons we can withdraw a franchise for trans-shipping because the drug company has boasted they will buy their Rolleis from Vancouver dealers if we refuse to sell to them

I can only tell you this: if you become a franchise dealer we will not sell to non-franchised dealers any of the models specified. We are prepared to try this for a period of one year and see the results.

. . ."

(Exhibit 1, Serials 139-41)

The requirement of the 6 x 6 Rolleiflex franchise that a complete range of cameras and accessories must be stocked apparently deterred some dealers from applying for a franchise although this condition was waived for some dealers in smaller centres. It also appears that Arrow saw the franchise plan as a means of excluding certain dealers from handling 6 x 6 Rolleiflex cameras. In a memorandum of August 20, 1958 to all salesmen Mr. Moss wrote:

" . . .

We are extremely anxious not only to sell the plan to a number of dealers but to restrict it. This is a heaven-sent opportunity to remove some of the price-cutting, objectionable

dealers from our list. . . .

. . . "

(Exhibit 1, Serial 120)

Referring to Baker Drugs Ltd., Vancouver, in his weekly call report for the week ending September 19, 1958, Mr. Nyberg wrote:

" . . . He also applied for the Rollei franchise. However, I am holding this back since I do not particularly want this price cutter included.

. . . "

(Exhibit 1, Serial 144)

In a letter of January 2, 1959 to a retailer who did not accept a franchise, Mr. Moss wrote:

. . . "

The Rollei franchise was designed to protect dealers from price cutting by small, non-stocking dealers. . . .

. . . "

(Exhibit 1, Serial 211)

In all, about 300 retailers out of the 1,100 on Arrow's trade lists became franchise dealers for 6 x 6 Rolleiflex cameras (Exhibit 1, Serial 211). The results of the franchise plan were described by Mr. Couse in a letter of January 13, 1959 to Baker Drugs Ltd., Vancouver, as follows:

" . . .

The Rollei Franchise has practically eliminated price cutting on Rolleis across the Country and all the franchise dealers have seen a tremendous increase in their Rollei camera and accessories sales and in nearly all cases the sales have been made at list price.

. . . "

(Exhibit 1, Serials 218-19)

Although protection of stocking dealers against "price cutters" appears to have been a major reason for the introduction of the 6 x 6 Rolleiflex franchise plan by Arrow, another factor of considerable importance was the character of the product which requires that dealers be trained in its uses in order to inform a prospective buyer of its full potentials and of accessories which could be used with the camera. Mr. Moss explained the situation in the following way:

"Q. With regard to the preferred dealers, a moment ago you mentioned the question of service and demonstration would be given by the retailers. What exactly do you expect with regard to service being given by retailers?

A. Well, the major problem we have with any expensive product - and this is particularly Rollei, our projectors and so on are self-explanatory, there are instruction books, there is very little to go wrong, the dealer knows how to put a new shutter on and the customer perhaps can put on a new belt. But when you come to Rollei we have found that only a very limited number of people will take the time to study the proper selling of this camera and the service we expect them to give the customer is to explain the finer points. Now, some drug stores who also handle box Brownies, now, we do not enjoy selling to them, we will get people coming to our place who have never understood that the viewing flap lifts up for magnifying, they don't know you can get magnifiers to suit your eye glasses, they don't know it will fit in an underwater housing, they don't know the effect of filters on film emulsions. When we are actually giving our franchise we try to have people who know what they are doing when they sell it. It takes a knowledge to this extent that I have been in it 25 years and I am ashamed that I don't know every last detail about every model Rollei. It is impossible because as an example there are two types of lenses, Zeiss and Zenaton and if you want to know the colour of it, the articulation, its sharpness, the number of lens shells, it is highly technical and people usually want a full explanation of all these matters when they are buying one of these cameras."

(Evidence, pp. 212-13)

CHAPTER III

ARROW'S DEALINGS WITH LONDON DRUGS LIMITED, BAKER DRUGS LTD. AND EDMONTON PHOTO SUPPLY LTD.

1. London Drugs Limited

London Drugs Limited, sometimes referred to as London Drugs, was incorporated under the British Columbia Companies Act on December 31, 1957. The president of the Company and proprietor of the business is Mr. S. S. Bass. London Drugs began to engage in the sale of photographic equipment on a substantial scale about April or May, 1958. Up to that time cameras and photographic supplies had been retailed as part of the general business of a drug store. According to the evidence of Mr. Bass, within the first year of undertaking the sale of photographic equipment in a larger way business in such lines grew to more than three times the amount of drug store business, which showed little change (Evidence, pp. 46-47).

Arrow became a supplier of photographic equipment to London Drugs about the time that the latter began to retail such lines in a larger way. On June 9, 1958 Mr. Nyberg wrote to Mr. Moss about sales already made by Arrow to London Drugs:

"This account, as you perhaps know, gave us over \$2,000.00 worth of business last month and is developing quite well. However, as you may be aware, he is strictly a cut-rate house, cutting prices on everything approximately 25%. He is at the moment on a direct account with Spencer & McMullen, Queen Sales, Mondo, Carson, General Photographic Products, Bell & Howell, Kodak and Viewmaster. Also, I noticed that Jimmie Andrew of Garlick was in there yesterday selling him some stuff.

He purchased, among other things, a small number of Rolleis last month but so far he has not advertised them at a cut price. The problem I have at the moment is that he keeps insisting that he wants to cut the price and advertise it as such. However, he will not do so unless I give the O. K.

The other dealers in the City are already up in arms concerning this fellow. I do not want to antagonize them any more than I can help. May I have your opinion as to whether I should let him go ahead and advertise Rollei. In other words, what would you do if you were in my position?"

(Exhibit 1, Serials 81-82)

Mr. Bass gave the following evidence in regard to discussions with Mr. Nyberg about purchases from Arrow:

- "Q. Did you at any time during June, 1958, have any discussion with Mr. Nyberg with respect to your advertising and selling policies?
- A. Yes, we did.
- Q. What was discussed and can you tell us what was the outcome of such discussions?
- A. Our discussions was [sic] on the line when we first called him in to make arrangements to buy direct from them, that we were not going to maintain any suggested list price that they had. That we would set our own prices according to our margin of operation and at that time he informed me they would sell us everything in their line with the exception of the Rollei cameras.
- Q. You said they would supply you with all the line except the Rollei?
- A. Yes, on which they wanted to maintain price."

(Evidence, pp. 51-52)

The evidence of Mr. Nyberg was that London Drugs did purchase some Rollei 4 x 4 cameras in June, 1958 but that there were no purchases of Rollei 6 x 6 (Evidence, pp. 9-10).

As previously indicated, the advertising of photographic equipment by London Drugs at prices substantially less than suggested retail list prices led to complaints by some Vancouver retailers to Arrow. An instance of this kind is summarized in the Statement of Evidence as follows:

- "24. On June 20, 1958 London Drugs Limited of Vancouver published an advertisement in a local newspaper in which a Photavit camera distributed by Arrow was offered together with a roll of film for \$69.95 or one half the suggested resale price. [Exhibit 1, Serial 97] Following this advertisement, Dunne & Rundle Limited, a Vancouver camera retailer, wrote to Arrow objecting to it. Mr. Rundle, the President of the Company, indicated that he understood that Arrow's policy was against this sort of merchandising, 'but your recent actions would seem to suggest that you have weighed the matter and have decided upon

a new policy'. [Exhibit 1, Serial 98] In his reply of June 25, 1958 Mr. Moss, after explaining to Mr. Rundle that 'much of this cut rate business is not new' and was prevalent in Toronto, stated:

"It is something we have fought. For instance, you will not see Rollei advertised by London Drug. How long can we keep them to their promise, however, when Baker Drugs come in over them and offer Rollei quite without our knowledge.

. . .

We rejected the London Drug type of advertising simply because it is not good business in our opinion."

(Exhibit 1, Serial 95)

Although Arrow found that filling the orders of London Drugs for photographic supplies created difficulties with some of its other customers, it did not wish to forego the volume of business being developed by London Drugs. In a memorandum of July 2, 1958 to Mr. Moss, Mr. Nyberg wrote:

". . .

. . . I believe though that people like London Drug have their place for clear out items etc. In future I will concentrate in selling them clear outs such as the old model Photavit etc. and will try and keep our regular items out of there as much as possible."

(Exhibit 1, Serial 99)

On July 31, 1958 Mr. Nyberg wrote to Mr. Couse:

"I have twenty-five Elmo 8mm projectors in the Customs. London Drug will take immediate delivery of thirteen of these and I will sell to them providing I can get Sam Bass to ease off on the advertising.

. . .

Please let me have your ideas as to what to do about London Drug in the future. Should we ease off with them or continue to supply them outright. . . ."

(Exhibit 1, Serial 117)

Mr. Bass testified that the projectors were supplied to him at this time (Evidence, p. 52).

Mr. Couse replied to Mr. Nyberg on August 7, 1958 as follows:

"I think copies of my letters to Dunne & Rundle, and those from Mr. Moss, have given you a pretty good idea of our feelings towards London Drug. As you say, he will now have to start charging more legitimate prices once he has established a clientele.

Please, however, try and get them to stop cutting prices on Rollei but the rest of the lines are pretty well wide open to him.

We think the whole Vancouver area needed a dealer like this to get them to do some active merchandising.

. . ."

(Exhibit 1, Serials 118-19)

Another instance in which advertising by London Drugs led to complaint by a specialized retailer to Arrow is presented in the Statement of Evidence as follows:

"72. In September 1958, 25 Rollei 4 x 4 cameras were purchased from Arrow by London Drugs at a discount of 50 per cent from the suggested list price prevailing at that time, \$164.50, or a net price of \$82.25. [Evidence, pp. 53, 266, 267] These cameras were offered for sale by London Drugs at a discount of approximately 40 per cent or \$99.50. [Evidence, p. 15] Immediately Dunne & Rundle Limited complained to Arrow about this discount [Exhibit 1, Serials 137-38] and Nels Nyberg, in his weekly call report for the week ending September 19, 1958, also indicated an unfavourable reaction from Dunne & Rundle Limited. [Exhibit 1, Serial 143] In his reply to them, Mr. Moss indicated that the special sale of the Rollei 4 x 4 cameras had been prompted by the over-stocked position in which Arrow had found itself. He also indicated, however, that the new franchise system for certain Rollei items would help to prevent this situation arising again, and would limit franchised items to franchised dealers. [Exhibit 1, Serial 140]"

It will be recalled that the Rollei franchise applied only to 6 x 6 Rolleiflex cameras. Mr. Bass gave the following evidence with respect to his attempts to secure a franchise:

"Q. Did you, at the beginning of August, 1958, have discussion with Mr. Nyberg, with respect to your selling policy on the Rollei cameras?

- A. Yes, we discussed it every time he was in the store.
- Q. Was there any special discussion at that time?
- A. Our discussion every time I saw him was 'When can I get the Rollei franchise' and I promised him at one stage in one discussion that we would not do price advertising but we would mark the camera to a reduced price on the shelf and I think in August, if I remember correctly, he had recommended us to the office in Toronto, but they turned it down."

(Evidence, pp. 52-53)

On September 23, 1958 Mr. Nyberg wrote to Mr. Moss that London Drugs had ordered 25 Elmo 8mm. projectors and had indicated that a better than normal discount was desired (Exhibit 1, Serial 146). Mr. Moss answered on September 26, 1958:

" . . .

I leave the decision to you on this. I feel that they will simply sell them at a ridiculously [sic] low Price, and ruin the market which you have so carefully built up.

You have a lot of these on back orders from dealers now which might become cancelled and I think an extra discount will only make them cut the price lower. We have to think of tomorrow too. It occurs to me whether we should sell them at all.

I certainly would not consider an extra discount because the only reason they want them is they know they are a hot item. 25 is not very many at the rate they are going. I think 40% is about it.

. . ."

(Exhibit 1, Serial 147)

In reply to Mr. Moss on September 29, 1958 Mr. Nyberg wrote:

"I don't like selling to these price-cutters in fact I was against selling London Drug in the first place until Jack came out here on his last trip and advised me to do so. However, there are a lot of pros' and cons' to it. Under the present economic conditions the regular dealers do not seem to

be able to give us the volume. London Drug has been selling these projectors for around \$135.00. However last weekend Camera Supply had them on sale for \$119.00. Everybody is trying to beat everyone else's price around here. You mention that perhaps we should not sell London Drug at all but then we shouldnt [sic] sell Camera Supply either. This will all straighten itself out in time when they find they are making no money."

(Exhibit 1, Serial 149)

On the foot of this document, Mr. Moss wrote the following note to Mr. Couse: "Jack? Should we sell 25 to London Drug? Wire Nels." (Evidence, p. 261)

On October 7, 1958 Mr. Couse wrote Mr. Nyberg as follows about future dealings with London Drugs:

" . . .

Concerning London Drug, it appears that he has caused you a great deal of trouble but he has, at least, provided you with some business when all the other dealers have been very slack.

You mention that you were against selling them but that I advised you to do so. This is absolutely true but I only advised you to sell them after discussing the matter with you fully and I think that we both expected exactly what happened. However, now that the introduction of Rollei Franchise has come, I think we can cut him off on at least Rollei and possibly, ease out gracefully with our other products.

The only thing that bothers me is the fact that every other major supplier except Carveth is supplying them. Therefore, this decision must be completely yours as you are the one who is closest to it and must live both with all the advantages as well as the disadvantages.

. . .

. . . I would suggest that you do not supply them with Elmo projectors on a special deal as we are completely sold out here and desperately needing them, and I notice you have shipped all the 25 which you received.

. . ."

(Exhibit 1, Serial 151)

According to the evidence of Mr. Nyberg the projectors mentioned in the foregoing correspondence were supplied to London

Drugs (Evidence, pp. 16-17).

Arrow continued to do business with London Drugs and in a memorandum of December 1, 1958 to Mr. Moss, Mr. Nyberg said that he thought a fair amount of business could be done with London Drugs (Exhibit 1, Serial 190).

Early in 1959, however, Mr. Nyberg apparently decided that another course should be taken with respect to London Drugs. In a memorandum of February 13 to Mr. Couse he wrote: "In future I am going to ignore selling London Drug entirely." (Exhibit 1, Serial 241). Mr. Couse made the following comment in a reply dated February 23, 1959:

" . . .

It would appear that London Drug have had their run of success and I think you are right in cutting them off now that business is starting to return to normal in Vancouver.

. . . "

(Exhibit 1, Serial 240)

Mr. Nyberg had also written to Mr. Moss on February 13, 1959 notifying him of the decision to stop selling to London Drugs:

"I would like you to ship all the items that these people have on back order as soon as possible. It is my intention to stop selling these people immediately. I believe the best way to handle this is to say nothing to them but to ship all items now on back order as quickly as possible so that they will bring their account up to date.

When you have done this, please let me know. It will be time enough then to inform them that we no longer wish to sell to them. I have asked Sam Bass repeatedly not to continue advertising the Elmo Projector at a cut price, but he has refused to co-operate. In the long run a practice of this kind will do us a lot of harm. Therefore I see no alternative but to stop selling him."

(Exhibit 1, Serial 64)

Mr. Moss wrote to Mr. Nyberg on March 4, 1959 that all of London Drugs' back orders had been filled. He commented: "I think

if we do cut them off for a few months it will bring results"
(Exhibit 1, Serial 63).

Mr. Bass gave the following evidence about Arrow ceasing to supply him with photographic equipment:

"Q. . . . Could you tell us what supplies you received from Arrow?

A. They would supply us with the rest of the line, whatever they carried they would supply. They supplied that until the last week of February, 1959 and after that they stopped supplying us any equipment at all.

Q. When were you cut off did you say?

A. February, 1959.

Q. How were you notified Arrow would not supply you any more?

A. By their representative Mr. Nyberg.

Q. Verbally or --

A. -- no, verbally.

. . .

Q. You recall having ordered a certain number of Elmo 8mm projectors?

A. Yes, we ordered them. Elmo's were supplied to us I think until December, I believe the middle of December, we got all the Elmo's we wanted. December, 1958. The last shipment of Elmo's we got from them was, I think, three in the month of February, 1959, after which time they refused to ship any further and according to Mr. Nyberg the reason for that is they wanted to bring the price of Elmo back to list price, I think \$169.50.

Q. And you were selling at what?

A. \$129.88.

Q. Did you discuss the price at that time?

A. He said it was out of his hands and he had to follow instructions from Toronto."

Arrow's policy of not selling to London Drugs after February, 1959 is indicated in a memorandum of May 12, 1959 from Mr. Nyberg to Mr. Couse:

"With reference to your memo of May 8th offering an extra projector free to anyone who takes 12, this is certainly added incentive. However, out here in Vancouver there are very few dealers who would buy 12 projectors of any one make at one time. Actually the only ones who could be interested are people like Sam Bass.

In view of your policy of not selling to price cutters, which, by the way, I think is very admirable, this limits the number of possibilities out here

. . . "

(Exhibit 1, Serial 267)

Representatives of the Director of Investigation and Research obtained documents from the premises of Arrow on August 11, 1959. According to the evidence of Mr. Moss the selling policy of Arrow was modified at that time:

"Q. Do you still have what is called preferred dealers at the present time?

A. Well, as soon as I walked into my office after my holidays and found these investigators anybody is preferred. We sell anybody anything at any price any time."

(Evidence, p. 210)

The evidence indicates that in September and October, 1959 Arrow filled two orders for London Drugs in the amount of \$1,748 and \$610 respectively (Exhibit 6; Evidence, p. 51). From June, 1958 to February, 1959, however, orders for London Drugs had been supplied by Arrow in each month.

2. Baker Drugs Ltd.

Mr. Archie Baker has operated a drug store at the corner of Granville and Smithe Streets in Vancouver since 1952. In 1957 the business was incorporated as Baker Drugs Ltd. under the British Columbia Companies Act. Mr. Baker has been engaged in retailing photographic equipment since 1952 and has secured supplies from Arrow since 1953. The sale of photographic equipment and supplies forms between 35 and 40 per cent of the total business of

Baker Drugs (Evidence, pp. 28-29).

Prior to September, 1958 Baker Drugs had purchased Rolleiflex 6 x 6 cameras and Rolleicord cameras from Arrow. As indicated earlier, Mr. Baker's application for a Rollei franchise had been held back by Arrow's salesman, Mr. Nyberg, because he did not want "this price cutter included" (Exhibit 1, Serial 144). After the Rollei franchise plan was adopted by Arrow, Mr. Baker could not secure 6 x 6 Rolleiflex cameras from Arrow. On January 8, 1959 Mr. Baker wrote to Mr. Couse about Mr. Nyberg's refusal to accept orders from Baker Drugs for items included under the Rollei franchise plan. His letter included the following:

" . . .

No doubt the local situation of price cutting is the determining factor in Nels' [Nyberg] decision not to supply me. If you will recall your trip here last April, Jack, I expressed my opinion of your opening a particular account in town with the evident outcome, at that time you assured me that you company would never open that account. However, one week later he had your merchandise and did the expected price cutting. Naturally we had to follow suit in order to protect ourselves and for this we are being penalized today.

As you know I have been selling Rollei products for over 8 years in this location. I am still being asked to handle your other merchandise but Rolleiflex is not on the list -- why?

If you feel as does Nels that in order to protect your 'Local Big Seven' you do not wish me to stock the line, I will go along with this, but I do want to be in a position to be able to pick up immediately the odd peice [sic] of equipment and accessory as I require some. I will not advertise this product, but do insist on being able to supply my customers on demand.

. . . "

(Exhibit 1, Serials 220-22)

Mr. Couse replied on January 13, 1959 to Mr. Baker in a letter from which an extract has already been given:

" . . .

I can state quite definitely that everyone that is an authorized Rollei dealer in Vancouver under the new franchise set up agreed to all the terms of the Franchise and no special terms were made. Up to the present time we have refused a

number of Vancouver applications including Photolec because they wanted it on their terms.

The Rolleiflex T is a franchise model and, therefore, Nels could not supply you with this camera if you are not franchised.

The Rollei franchise has practically eliminated price cutting on Rolleis across the Country and all the franchise dealers have seen a tremendous increase in their Rollei camera and accessories sales and in nearly all cases the sales have been made at list price.

You mention that I told you definitely that we would not open up London Drug (who you are no doubt referring to in your letter) but I am quite sure that I did not make such a statement. I think I possibly did say that we were not selling them at that time. London Drug is not a franchised dealer and if they ever do become one they will have to live up to the terms of the agreement.

We would certainly give your application for the Rollei Franchise full consideration if you are prepared to live up to the Franchise terms but I can tell you quite definitely we would never consider any special terms on which you could purchase Rolleiflex 6 x 6 models without first approving you as a franchised dealer.

. . . "

(Exhibit 1, Serial 218-19)

Mr. Nyberg wrote to Mr. Moss on January 8, 1959 about demands of Baker Drugs for Rolleiflex cameras as follows:

"Baker Drugs is demanding that I sell them a Rolleiflex T. I don't want to give this fellow the franchise. What is our legal position? We sold him Rolleis in the past. He refuses to stop cutting prices. What are you doing back east in a case like this?

. . . "

(Exhibit 1, Serial 217)

A reply to Mr. Nyberg's letter was written by Mr. Couse on January 13, 1959:

"Many thanks for your letter of January 8th. Attached is my reply to his letter in which he practically begged for Rolleis. We will only grant him the franchise if he agrees to all its terms and agrees to stop advertising Rolleis at cut prices. Our legal position in refusing to sell anyone Rolleis is this:

1. We don't refuse them the Franchise because they are cutting prices but because we don't feel they are capable of selling this type of merchandise.
2. No court or law can force us to sell any of our lines to anyone we don't want to.

If Archie wants Rollei bad enough he will certainly come around to our way of thinking. Even if he gets the Franchise and still cuts prices we can cut him off because I doubt if he would even pay his bills on time and that's the best reason in the world for cutting any dealer off.

. . ."

(Exhibit 1, Serial 216)

In his evidence Mr. Baker said that he followed a policy of delaying payments to suppliers of photographic equipment so that he would have a balance outstanding if a supplier refused further supplies (Evidence, pp. 33-34).

Arrow continued to supply Baker Drugs with items not covered by the Rollei franchise. Mr. Nyberg described the situation with respect to Baker Drugs in a memorandum of February 13, 1959 to Mr. Couse:

" . . .

. . . The only other discount house which has been a thorn in the side of the local dealers is, of course, Baker Drugs. However, Archie has promised to co-operative [sic] to the extent of not advertising or displaying in his store our products at cut prices. As long as he does this I will continue to sell to him in limited quantities, keeping in mind that his credit position is not always the best.

. . ."

(Exhibit 1, Serial 241)

Mr. Baker's evidence in regard to the sale of Arrow

products included the following:

- "Q. Were you asked not to advertise or sell such products at cut prices?
- A. I was asked not to sell them or to advertise them.
- Q. You were asked by whom?
- A. By their salesman, Mr. Nyberg. It was just a verbal conversation."

(Evidence, p. 31)

3. Edmonton Photo Supply Ltd.

Edmonton Photo Supply Ltd. was incorporated under the Alberta Companies Act on December 28, 1955. Mr. Louis Rudolph is proprietor of the business which is the retailing of photographic equipment and supplies in the City of Edmonton, Alberta.

The evidence indicates that Edmonton Photo Supply Ltd. had made occasional purchases from Arrow since its incorporation and that some purchases had been made by Mr. Rudolph before the business was incorporated (Evidence, p. 267)

About April, 1959 Mr. Rudolph ordered some Rolleiflex items from Arrow and on May 20, 1959 wrote to Arrow regarding delivery. In a reply dated May 25, 1959 Mr. Couse wrote:

" . . .

As you know Rollei 2.8's, 3.5F and 3.5T cameras and accessories are sold only to those dealers who have signed our Rollei Franchise agreement, a copy of which is enclosed. One of the clauses in this agreement is that the Rolleiflex line will not be sold or advertised at discount prices.

We mention this fact as we believe you do a lot of advertising at lower than the suggested list price, and we would not want Rolleis included in any such advertising. However, Al Dudlets our new Western Manager will be in Edmonton during the first part of June and will discuss this matter with you at that time and answer any question you might have concerning this Rollei Franchise.

. . . "

(Exhibit 1, Serial 277)

The Rollei franchise agreement did not contain any clause regarding resale prices but it is evident that Mr. Couse considered an understanding on this point as an essential part of the arrangement.

Mr. Rudolph replied to Mr. Couse on May 28, 1959:

" . . .

We note that you mention that your Rollei line is only sold to franchised dealers. We have bought Rollei from you after the franchised date and therefore were wondering what you meant that the Rollei will not be sold to any dealer who does not maintain a suggested list price.

On receipt of your letter I was somewhat puzzled by this approach because to my knowledge no franchise can be based on price as this is contrary to the Combines Act. Therefore, in order to make sure that I was correct in my supposition I checked with our Solicitors who advised me that Arrow Films could not refuse to sell us on these grounds.

I, therefore, was wondering whether you have checked in to this matter before writing the letter which you did. If this is the basis of your refusal it is my intention to turn the matter over to our Solicitors in order to investigate the matter even though we are small buyers of Rollei because it will be interesting to know whether you have a case or not.

It seems to me that every photographic distributor and wholesaler would franchise his line if he could protect it in this way.

. . . "

(Exhibit 1, Serial 276)

Mr. Couse wrote again to Mr. Rudolph on June 2, 1959:

" . . . The Rollei Franchise is not based on price alone but on the fact that as exclusive distributor for Rollei in Canada we can appoint Franchised dealers as we see fit according to the following:

1. Dealers ability to stock a complete line of Rollei cameras and accessories at all times.
2. Dealers ability to advertise Rollei regularly.
3. Dealers ability to pay his bills.

4. Population serviced by each Franchised dealer.

Upon checking your file we find that you have received some Rollei material which does come under the Franchise but this was done in error on our part.

As I mentioned in my letter of May 25th Al Dudlets will be in Edmonton shortly and will discuss the matter with you at that time as I am sure we can come to some amiable solution."

(Exhibit 1, Serial 275)

On June 3, 1959 Mr. Moss wrote a memorandum to Mr. Dudlets, the new Arrow salesman for the western area:

" . . .

No doubt you now have copies of the correspondence between Jack and Louis Rudolph. I feel he has forced you to cut him off temporarily. Jack wrote in a nice way explaining the Franchise and immediately gets Rudolph's Solicitors thrown back at him. If you give Rudolph Rolleis I feel perfectly sure that he would prove a point by immediately advertising them at a cut rate.

When you are discussing the price setting point with Rudolph please stress that this is only a very minor part of the Franchise and one that we ask him to adhere to only on a friendly basis. You justify this by saying it seems ridiculous to cut the price on a good article which is in such short supply and when we have none to give him. Against this, however, if we should be able to find some from our very low stock for him we think it would be unbusinesslike for him to cut the price.

You could also point out that it was the dealers themselves who suggested this feature and we have no intention whatsoever of getting legal with him. If he is not agreeable to this we are not supplying him Rolleis because:

1. The shortage
2. The Edmonton Population does not warrant two Rollei dealers.
3. He probably does not want to put in all the accessories which you can tell him he has to have.
4. We like doing business on a friendly basis and his answering letter is not the friendly co-operative approach we expect.

You could also point out that if he does take it to the

Supreme Court and wins then he can have his Rolleis at the new discount of 10%.

. . . He is liable to make a big point out of the fact that he has received Rolleis since the Franchise was put into effect. You might point out that this was a friendly gesture on the part of Nels Nyberg and happened to be an error. In the same sentence you can point out that Nyberg is no longer with us and imply that one of the reasons is that when we set certain policies we like to see our staff and our dealers adhere to them.

His sentence 'It seems to me that every photographic distributor and wholesaler would franchise his line if he could protect it in this way,' is very significant indeed as he is telling us that distributors need protection from his kind of operation. I think your whole conversation might swing around this paragraph and price setting has nothing to do with it. We have many other ways of doing it.

. . . "

(Exhibit 1, Serials 279-80)

Mr. Dudlets reported on his visit to Edmonton Photo Supply Ltd. in a memorandum of June 14, 1959 to Mr. Couse:

" . . .

Edmonton Photo Supply - There was nothing much I could do here. Louis insists that your letter of May 25 in which discounting was mentioned as a reason for not franchising him is a matter for Ottawa to look into. He says its the principle of the thing & that he intends to follow through. For a moment I was tempted to give him the franchise but he started to boast about how he was going to import Rolleis direct from Germany & ruin the Rollei market for all of Canada & the thousands & thousands of dollars of business that we're going to lose by not doing business with him, etc. etc. etc. The unfortunate part is that aside from all the B.S. he has got a big store & he is opening a branch store in the premises that McBains are vacating in August. I don't think there is anything we can do now except sit tight & see if he makes any further move. I don't think we should write him any more letters on the subject & I'll call on him each trip & fill any orders we may get except franchised items.

. . . "

(Exhibit 1, Serials 282-85)

CHAPTER IV

CONCLUSIONS AND RECOMMENDATION

A. Conclusions

It appears from the evidence in this inquiry that the instances forming the basis of the allegations against Arrow made by the Director of Investigation and Research arose out of changing conditions in the retail trade in cameras and other photographic equipment and supplies which had begun to develop some time prior to May, 1958. According to the evidence of Mr. Nyberg, formerly western salesman of Arrow, the retailers who specialized in camera lines had normally resold articles at suggested retail list prices. In one memorandum to Arrow, Mr. Nyberg said that prior to the entrance of London Drugs as a substantial seller of cameras and photographic supplies the only price cutting which took place was the periodic sales by department stores (Exhibit 1, Serials 87-88).

Cameras and photographic supplies were sold by Arrow at a discount from a suggested retail price list. At the time Mr. Moss gave evidence the discounts offered on different items were 33 1/3 per cent, 33 1/3 per cent plus 5 per cent, 35 per cent, 38 per cent, 40 per cent and 50 per cent (Exhibit 1, Serial 29). Some items carried larger discounts than others and, in some cases, the larger discounts were available when articles were purchased in lots of three, six or a dozen. It will also be noted from some of the incidents described in the previous chapter that larger discounts might be available if a line had been over stocked or was being discontinued.

The historical reasons for the sale of camera items by distributors at substantial discounts from suggested retail list prices appear to have included the wide range of articles which are stocked by a well-equipped camera store, the slow turnover of more specialized cameras and accessories and the extensive demonstrations by trained personnel in dealing with prospective customers of more expensive cameras. At the same time, the range of discounts at which photographic equipment and supplies could be purchased provided opportunities for retail dealers who wished to feature the sale of particular items to promote the sales of such articles at prices substantially below the suggested retail list prices and, provided a sufficient volume of sales was achieved, to be able to do so on a remunerative basis. The development in this direction appears to have been assisted by an enlarged public interest in photography and the exhibition of photographs which led to an expanding demand for cameras and accessories and for projectors and related lines.

It appears from the evidence that, in the beginning, Arrow was interested in obtaining the business offered by London Drugs although apprehensive about the reaction of specialized camera dealers to the sale of photographic equipment and supplies to a retailer who was known to promote the resale of such products by advertising them at what were termed "cut rate" or "discount" prices. Arrow's decision to supply London Drugs with photographic equipment and supplies brought some useful results to Arrow by providing an outlet for some items which were not purchased as readily or in the same quantity by other Vancouver dealers. However, the sales promotion carried on by London Drugs increased the opposition of specialized dealers and led to the threatened discontinuance of further buying from Arrow by some dealers.

The opposition of some of Arrow's customers in Vancouver to the supply of photographic equipment and supplies to retailers who promoted the sale of such articles by advertising them for sale at prices substantially less than suggested retail list prices apparently was also experienced by Arrow in other centres across Canada. Arrow thereupon decided to place a high quality group of products, namely Rolleiflex 6 x 6 cameras and accessories, under a franchise system of distribution. The franchise system offered the possibility of enlisting the services of well-trained dealers with adequate stocks for the demonstration and sale of rather complex cameras and their accessories to users.

The franchise system as put into operation by Arrow was clearly intended to be a means of excluding dealers who would promote the resale of Rolleiflex 6 x 6 cameras by advertising and offering them for sale at prices substantially less than the suggested retail list prices. There was no clause in the franchise agreement relating to resale prices but the conditions for the granting of a franchise which were implicit in the consideration given by Arrow in accepting applications for a franchise leave no doubt that control of resale prices was an important underlying feature of the Rolleiflex 6 x 6 franchise plan. Mr. Couse, Sales Manager of Arrow, when writing to Edmonton Photo Supply Ltd. about the Rollei franchise said that one of the conditions for the franchise was that "the Rolleiflex line will not be sold or advertised at discount prices." He also indicated that Arrow would not want Rollei items included in advertising at lower than the suggested retail price (Exhibit 1, Serial 277). In a memorandum to Arrow salesmen, Mr. Moss wrote that the franchise plan was an opportunity to remove "some of the price-cutting objectionable dealers from our list" (Exhibit 1, Serial 120).

We may now turn to the particular situations which were referred to in the allegations of the Director. According to the evidence of Mr. Bass of London Drugs the representative of Arrow was informed that London Drugs was not going to maintain Arrow's suggested retail list prices when the first orders were placed for

photographic equipment and supplies. Mr. Bass's evidence was also to the effect that Arrow's representative expressed willingness to supply all items except Rollei cameras on which Arrow wanted prices maintained. Subsequently, London Drugs was supplied by Arrow with Rollei 4 x 4 cameras which was not the type included in the Rollei franchise plan. Although Arrow's representative, Mr. Nyberg, indicated in one memorandum that he had obtained an undertaking from London Drugs that prices of Rollei items would not be cut without approval by Arrow, at a later date London Drugs advertised Rollei 4 x 4 cameras at a price substantially lower than the suggested retail list price. With respect to another line of photographic equipment, Arrow's Vancouver representative wrote to Mr. Moss, President, that he had repeatedly asked Mr. Bass not to continue advertising the Elmo projector at a cut price. At this time, February, 1959, the decision was made by Arrow not to accept any further orders from London Drugs.

It was argued on behalf of Arrow that attempts by the Company to secure the discontinuance of advertising by London Drugs at a "cut price" should not be construed as an attempt to secure the observance of a minimum or other price specified by Arrow. This argument proceeds on the basis that while Arrow endeavoured to have the advertising of deep price cuts discontinued, it did not specify a minimum price for the retailer to use. The Commission cannot accept this distinction as differentiating the Company's attempts from those defined in section 34 (2) of the Combines Investigation Act. In the first place, the use of the term "cut price" clearly involves a recognized price which is being reduced, and it is obvious that the recognized price in this case is the suggested retail list price. Secondly, the attempt to induce the discontinuance of advertising at a "cut price" necessarily involves an alternative price, the advertising of which would be acceptable to Arrow. Whether such a price was the suggested retail list price or a lower price is not significant. In either case it would be a price indicated to the retailer by the supplier.

The refusal of London Drugs to modify its advertising of lines supplied by Arrow in a way acceptable to Arrow resulted in Arrow discontinuing the sale of photographic equipment and supplies to London Drugs. It is the opinion of the Commission that this action conflicted with the policy respecting resale price maintenance as set out in section 34 (3) of the Combines Investigation Act.

In the case of Baker Drugs and Edmonton Photo Supply, the only items which Arrow refused to sell to these retailers were those covered by the Rollei franchise plan. In both cases it was indicated by Arrow in a fairly clear fashion that the supply of such items would be considered by this Company if the retailers would undertake not to advertise the products at what were termed "cut prices". In the opinion of the Commission the proposal to supply goods on the acceptance of such a condition by the retailer constituted

an attempt to induce the retailer to maintain resale prices specified by the supplier. The failure of the retailers to agree to the condition proposed by Arrow resulted in Arrow refusing to supply items covered by the Rollei franchise.

Although the situations covered by this inquiry occurred prior to the amendments made in 1960 to the Combines Investigation Act, it was submitted on behalf of Arrow that the actions of the Company could be justified under sub-section 5 of the section 34 which formed part of the 1960 amendments. This sub-section, which is described in the marginal notes as "Defences", reads as follows:

"(5) Where, in a prosecution under this section, it is proved that the person charged refused or counselled the refusal to sell or supply an article to any other person, no inference unfavourable to the person charged shall be drawn from such evidence if he satisfies the court that he and any one upon whose report he depended had reasonable cause to believe and did believe

- (a) that the other person was making a practice of using articles supplied by the person charged as loss-leaders, that is to say, not for the purpose of making a profit thereon but for purposes of advertising;
- (b) that the other person was making a practice of using articles supplied by the person charged not for the purpose of selling such articles at a profit but for the purpose of attracting customers to his store in the hope of selling them other articles;
- (c) that the other person was making a practice of engaging in misleading advertising in respect of articles supplied by the person charged; or
- (d) that the other person made a practice of not providing the level of servicing that purchasers of such articles might reasonably expect from such other person."

It will be noted that the new sub-section relates to evidence of refusal to sell or to counselling the refusal to sell and, therefore, is not related directly to attempts to induce the maintenance of resale prices. It would appear that the sub-section applies only in the circumstances set out in paragraphs (a), (b), (c) and (d) above and only where there has been an actual refusal to sell or a counselling of refusal to sell.

No evidence was put before the Commission to support any of the conditions which are set out in sub-section (5) but issue was taken by Arrow with certain evidence obtained in the inquiry as to the volume of business in photographic equipment and supplies done by London Drugs and Baker Drugs and as to the service and repair

facilities of these retailers. In the absence of clear evidence to the contrary, the Commission does not consider that it should disregard the evidence given by Mr. Bass and Mr. Baker on these aspects of their businesses.

The evidence obtained in this inquiry appears to the Commission to demonstrate that the three retailers whose advertising was unacceptable to Arrow in one or more respects were endeavouring to promote the sale of the photographic equipment and supplies they advertised in a profitable way. The fact that in some instances London Drugs was prepared to buy some items from Arrow in larger quantities than were ordered by some of the other retailers in the same area supports the inference, in the absence of contrary evidence, that such articles were acquired by London Drugs for the purpose of resale and not for the purpose of attracting customers in order to sell them other articles. This is a logical conclusion when it is borne in mind that the items, even when sold at less than suggested retail prices, would represent a substantial purchase by a customer.

In the light of these circumstances and in view of the failure of Arrow to submit any evidence in support of its claim to the defences specified in sub-section (5), the Commission does not find any grounds to modify the conclusions as to the nature of the actions engaged in by Arrow.

B. Recommendation

The situations giving rise to this inquiry appear to have occurred because of the pressure brought to bear upon Arrow by specialized camera dealers who objected to the Company's actions in supplying photographic equipment and supplies to retailers who promoted the resale of such articles by advertising them at prices substantially less than the suggested retail list prices. There is nothing in the evidence to suggest that such advertising was used for purposes of attracting customers in the hope of selling them other articles and, in fact, the evidence clearly indicates that the advertising was intended to produce a larger volume of sales of the articles so featured. At first, Arrow appears to have been satisfied to handle the business provided by the retailers to whose advertising objection found expression in indications that the business of complaining retailers might be lost to Arrow, the Company sought to remove the opposition by introducing its Rollei franchise plan and withholding supplies from London Drugs Limited in Vancouver.

While the inquiry launched by the Director of Investigation and Research was in progress, Arrow voluntarily abandoned its Rollei franchise plan and, as described by the President, Mr. Moss, adopted a policy under which any article handled by the Company will be supplied to any ready and able buyer. If this policy is followed without any

attempt to induce the maintenance of resale prices it would be in keeping with the policy with respect to resale price maintenance which is set out in section 34 of the Combines Investigation Act. Nevertheless it is possible that Arrow may again be subjected to pressure from some of its customers to restrict its dealings with retailers who continue to seek to build up the sale of photographic equipment and supplies by attempting to do a volume business on margins which are lower than those secured when sales are made at suggested retail list prices. The Commission therefore recommends that a court order be sought under the provisions of section 31 (2) of the Combines Investigation Act to restrain Arrow Photographic Equipment Limited from adopting any policy or taking any actions which would be in conflict with the policy with respect to resale price maintenance set out in section 34 of the Combines Investigation Act.

(Sgd.) C. R. Smith

Chairman

(Sgd.) A. S. Whiteley

Member

(Sgd.) Pierre Carignan

Member

Ottawa
July 12, 1961.

20.5.64

Government
Publications

Restrictive
Mission

E.

PLEASE DO NOT REMOVE
OR SLIP THIS POC

TY OF TORONTO LIB.

